

JOHN GAHR

IBLA 82-754

Decided July 9, 1982,

Appeal from decision of Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application W-76391.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases:
Applications: Filing -- Oil and Gas Leases: Applications:
Attorneys-in-Fact or Agents

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest, assignments, and multiple filings, are left unanswered.

APPEARANCES: William J. Thomson, Esq., Cheyenne, Wyoming, for appellant.

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

John Gahr has appealed from the March 19, 1982, rejection by the Wyoming State Office, Bureau of Land Management (BLM), of his noncompetitive oil and gas lease application, W-76391, for failure to properly complete his simultaneous oil and gas lease application form. Appellant's application had been drawn with first priority for parcel WY 2200 in the simultaneous oil and gas lease drawing held August 26, 1981.

The basis for the BLM decision was appellant's failure to answer the questions on the back of the application by completing items (d), (e), and (f), relating, respectively, to other parties in interest, assignments, and multiple filings. 1/

The statement of reasons submitted by counsel for appellant reads, in part, as follows:

1/ Items (d) through (f) are a series of questions, each of which is followed by boxes to be checked "Yes" or "No" in response. The questions are:

With reference to the qualifying declarations identified as (a) through (g) printed on the back of the DEC to which the offeror must certify, John Gahr was aware of the requirements for qualification to be a lessee, that he fulfilled those qualifications and could certify truthfully that he met those qualifications. Because of the size of the print and lengthy statements printed on the back of the DEC which measures approximately 8 1/2" by 3 3/4", the fact that he acted as a citizen without assistance, and was not aware of the boxes included within the printed matter of the qualification statements, John Gahr did not check the "no" box included within each of the declarations identified as (d), (e) and (f).

Counsel contends that appellant's failure to check the boxes in declarations (d), (e), and (f) should not disqualify him as first drawee but reasonably resulted from his inadvertance and oversight, since he is a 72-year old man who was acting on his own behalf. Counsel further argues that placing the boxes to be executed within the series of statements on the back of the applications is misleading to citizens acting alone without assistance. He also notes that the regulations do not specifically address the form of the application or the response boxes included on the back of the card.

[1] The applicable regulation, 43 CFR 3112.2-1(a), provides in relevant part: "An application to lease under this subpart consists of a simultaneous oil and gas lease application on a form approved by the Director, Bureau of Land Management, completed, signed and filed pursuant to the regulations in this subpart." (Emphasis added.) The application form clearly contemplates that items (d) through (f) would be checked on the application itself. Indeed, the introductory words to items (a) through (g) are as follows: "UNDERSIGNED CERTIFIES AS FOLLOWS (check appropriate boxes).\" (Original in italics.) Small boxes appear following each item to be checked in response. Although the application does contemplate that the names of other parties in interest, or amendments to one's previously filed statement of qualifications, may be submitted by attachment, the questions posed by items (d) through (f) are distinct issues.

Questions (d) through (f) are included in a list of questions on the application dealing with the applicant's qualifications to hold a lease and

fn. 1 (continued)

"(d) Does any party, other than the applicant and those identified herein as other parties in interest, own or hold any interest in this application, or the offer or lease which may result?

"(e) Does any agreement, understanding, or arrangement exist which requires the undersigned to assign, or by which the undersigned has assigned or agreed to assign, any interest in this application, or the offer or lease which may result, to anyone other than those identified herein as other parties in interest?

"(f) Does the undersigned have any interest in any other application filed for the same parcel as this application?"

The introductory words to items (a) through (g) are as follows: "UNDERSIGNED CERTIFIES AS FOLLOWS (check appropriate boxes).\" (Original in italics.)

deal particularly with the circumstances of the execution of the application. The failure to disclose a party in interest to the lease application (question (d)) is a violation of the regulation at 43 CFR 3102.2-7; the assignment of an interest in the lease offer (question (e)) prior to lease issuance or lapse of 60 days after determination of priority is a violation of 43 CFR 3112.4-3; and any interest of the applicant in more than one application for the same parcel (question (f)) disqualifies the applicant under 43 CFR 3112.6-1(c).

Although the Secretary of the Interior has discretion whether to issue an oil and gas lease for lands not within a known geological structure of a producing oil or gas field, he is required by statute, 30 U.S.C. § 226 (1976), to issue the lease to the first qualified applicant. Udall v. Tallman, 380 U.S. 1, 4 (1965). The Secretary is entitled to require such information as is necessary to ensure that an applicant for a lease is qualified. See Ken Wiley, 54 IBLA 367 (1981). The questions on the application form serve that purpose. The failure of the applicant to check an answer to each question creates a serious defect in the certification required by the application. Jake Huebert, 59 IBLA 179 (1981).

The information required under questions (d), (e), and (f) on Form 3112-1 (July 1980) was part of the certification of qualifications required of all applicants for oil and gas leases. William J. McGrath, 62 IBLA 110 (1982). Strict compliance with the regulations governing each drawing, 43 CFR Subpart 3112, is required to protect the rights of the second and third qualified applicants. Bonita L. Ferguson, 61 IBLA 178 (1982); Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), aff'd, 544 F.2d 1067 (10th Cir. 1976).

Appellant cites Brick v. Andrus, 628 F.2d 213 (D.C. Cir. 1980), in support of his contention that strict compliance is not mandated. However, that case addresses the manner in which a card was completed, not the omission of necessary information as to the applicant's qualifications to hold a lease.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bernard V. Parrette
Chief Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Douglas E. Henriques
Administrative Judge

